



**Medical Quality Assurance Commission
November 30, 2007
Business Meeting Minutes**

Medical Commission Members

Cabell Tennis, Public Member, Chair
Les Burger, MD, 2nd Vice-Chair
Frederick H. Dore, Jr., MD
Ellen Harder, PA-C
Judith Page, Public Member
Theresa Elders, Public Member
Anthony Robins, MD
Thomas Green, MD
Linda Ruiz, Public Member
Frank Hensley, Public Member

Samuel Selinger, MD, 1st Vice-Chair
Kenneth Cogen, MD - Absent
Susan Harvey, MD
Hampton Irwin, MD
Chelle Moat, MD
William Gotthold, MD
Judy Tobin, Public Member-Absent
Bruce Cullen, MD
Athalia Clower, PA-C
Anjan Sen, MD

Department of Health Staff:

Beverly Thomas, Program Manager
Joe Mihelich, Program Representative
Michael Farrell, Staff Attorney
Dani Newman, Compliance Officer
Dave Magby, Chief Investigator

Maryella Jansen, Deputy Exec Director
George Heye, MD Medical Consultant
Erin Obenland, Disciplinary Manager
Karl Hoehn, Legal Services Manager
Jim McLaughlin, Staff Attorney

Others in Attendance

Pamela Anderson, AAG
Kim O'Neal, AAG
John Arveson, WSMA Director

Melissa Burke-Cain, AAG
Mick Oreskovich, MD, WPHP Director
Jilda Johnson, WSMA

BUSINESS MEETING
CALL TO ORDER

Commission Chair Cabell Tennis, JD called the meeting of Washington State Medical Quality Assurance Commission (MQAC) to order at 8:00 a.m. on November 30, at the Holiday Inn Renton at One South Grady Way, Renton WA.

1.0 CHAIR REPORT

The Chair reported on the work of the Executive Committee, Walk in the Woods, the upcoming legislative session, the need for participation on formal hearings, and assistance in the evaluation of the executive director.

The Chair reported the full day meeting of the Walk in the Woods led by Dr. Leonard Marcus of the Harvard University School of Public Health. He stated Dr. Marcus specializes in conflicts in the medical community. Representatives of the Department of Health were Secretary Mary Selecky, Assistant Secretary Laurie Jenkins, Director, Bonnie King, Deputy Director Patty Latch, Executive Director Blake Maresh, Deputy Executive Director Maryella Jensen, and Program Manager Beverly Thomas. Representatives of the Commission were Sam Selinger, MD, Chelle Moat, MD, Les Burger, MD, Ellen Harder, PA-C and Public Members Judy Tobin and Cabell Tennis.

The Chair reported he was grateful that the Secretary and her staff were willing and able to give an entire day to the effort of building bridges between DOH and MQAC. He reported he was waiting for the written memorandum from Dr. Marcus, which will document any possible agreements. He indicated Dr. Marcus should be sending the report soon.

The Chair reported that the Department is very much concerned about the present and pressing efforts and issues with regard to the audit, the reorganization, the upcoming legislature, and the initiatives of the Governor. The Department hopes that once the legislative session is passed they can give more attention to the concerns which the Commission presented. The Commission focused on staffing by dedicated attorneys and investigators, the budget making process, rulemaking, the joint operating agreement and efficient case reviews. He said although it was a beginning, there is a great deal to be done.

The Chair reported that Laurie Jenkins Assistant Secretary requested some Commission members to work with the Department on areas such as the case files and content the Commission member get and the protocols of the investigations. He indicated Les Burger, MD and Tom Green, MD volunteered to work on the case files and contents and Dr. Burger, Dr. Selinger, Dr. Robins and Ellen Harder, PA-C volunteered to work on the investigation protocols.

The Chair reported that on January 14, 2008 the legislative session begins. He reminded the Commission that last year SHB 1103 almost was adopted that would have had a serious negative impact on the Commission. He indicated that he was fearful it will be reintroduced this year with possibly even more damaging elements. He stated that last year the Commission gave authorization to the Executive Committee to speak to the Legislature on MQAC's position. He stated that the Executive Committee will ask that all members of the Commission be delegated to speak to members of the Legislature in person and share their interests and concerns the good work of this Commission. He

encouraged them to seek out and meet with the legislator in their districts and others who are at hand. He stated that they will offer an outline of talking points if requested. He also reminded the Commission that if they have any contact with members of the Legislature they must report that contact to the Executive Director the person, the time, place and general subject matter for each of your meetings.

The Chair asked the Commission to consider their major responsibility to sit on formal hearing panels on respondents the Commission has charged. Case Manager Erin Obenland needs the Commission's support and cooperation when called upon. She stated if every Commissioner would sit for one or two hearings a year we would be able to fill our docket.

The Chair reported that Bonnie King, Director has asked for comments in preparation for Blake Maresh, Executive Director's evaluation. He indicated that he would like any of the members to send their impressions to him. He also stated he would meet with Mr. Maresh before sending the comments on to Ms. King.

The Chair reported that this was the last meeting for Pam Anderson, AAG. He stated Pam has more than done her duty to advise the Commission to and keep them on the straight and narrow path. She has been a loyal, strong, understanding and zealous advocate for the work of this Commission. He stated he was personally grateful for her support while chair.

ACTION TAKEN: The Chair entertained a motion to approve the resolution that all members of the Commission are delegated to speak on the behalf of the Commission to any legislators and reporting those contacts to the Executive Director on a quarterly basis. The motion was seconded and approved.

2.0 CONSENT AGENDA

The consent agenda contained the following items for approval:

- 2.1** Agenda for November 30, 2007
- 2.2** Minutes from the October 18, 2007, business meeting
- 2.3** Ratifications of Licenses

3.0 PUBLIC POLICY COMMITTEE

3.1 Interpretive Statement on WAC 246-919-370 in the Credentialing of Practitioners who have Retired or Not Practiced for an Extended Amount of Time.

The Policy Committee recommended approval of the proposed language of the interpretive statement for WAC 246-919-370 in the credentialing of practitioners who have retired or not practiced for more than two years should be require some clinical or competency before the license will be issued.

ACTION TAKEN: The Chair entertained a motion to consider the Committee recommendation. The interpretive statement will be brought back for adoption after the Department of Health has had an opportunity for review and approval.

3.2 Guidelines for Self-Prescribing and Prescribing for Family Members

The Policy Committee recommended the proposed guidelines for physicians self-prescribing and prescribing for family members be approved. However, they would like confirmation that these guidelines are not in conflict with the current guidelines of Washington State Medical Association. The proposed guidelines will be brought back for consideration.

ACTION TAKEN: No action taken.

3.3 State or Territory Licensure Examinations

The Policy Committee recommended the following to eliminate any confusion: 1) Enforce WAC 246-919-355 by requiring all applicants who have graduated from medical school after October 11, 1993 to take and pass all steps of the United States Medical Licensure Examination (USMLE). 2) Any applicants who graduated before October 11, 1993, and are using a state or territory licensure examination as their qualifying examination for licensure will be considered on a case-by-case basis. In addition, the committee endorses the use of WAC 246-919-370 that allows the Commission to require any applicants to take the SPEX exam or any other examination before considering licensure.

MOTION: The Chair entertained a motion to approve the Policy Committee recommendation. The motion was seconded and unanimously approved.

Ms. Thomas also requested direction on a specific applicant who had graduated from medical school in 1996 and has failed multiple attempts of the USMLE and was attempting to use a territory examination.

MOTION: The Chair entertained a motion that the applicant must pass all three steps of the USMLE before the application would be considered further. The motion was seconded and unanimously approved.

3.4 Copy and Paste Electronic Medical Record by other Practitioners

Ellen Harder, PA-C stated the Policy Committee is still considering whether or not it is appropriate for health care providers to copy and paste portions or all of other practitioners' electronic medical records as their own. She stated clearly this is for pathologist, laboratories and consulting physicians to copy and paste in other practitioner's electronic medical records.

ACTION TAKEN: No Action Taken

3.5 Letter from American Society for Dermatologic Surgery and from the American Board of Hair Restoration Surgery regarding False, Deceptive and Misleading Advertising

Dr. Selinger reported the Policy Committee felt that this issue is very difficult because sometimes it is not clear what level of training is needed for a certain medical procedure.

Dr. Selinger reported that the task group has been working on the rules for Non Surgical Cosmetic Procedures that will require a practitioner to disclose the training he/she has completed and make that information available to patients. The draft rules should be available the first week in December. Ms. Thomas will respond to the letter regarding false, deceptive and misleading advertising.

3.6 Proposed Case Review Summary Worksheets

Dr. Burger reported that he is working with Ms. Thomas on developing a case review summary that was in the packet. However, he will defer any further discussion to the new committees on Legal Files, and Protocols for Investigation files.

ACTION TAKEN: No Action Taken

4.0 MEMBERS REPORTS

4.1 Finance – Les Burger, MD

Les Burger, MD reported that the Committee did not meet. However, the committee has requested specific data on the following items:

- How many licenses that are issued each month?
- What does it cost to complete the process for a disciplinary case?
- Evaluation of the licensing fines and cost recovery.
- Indicate the number of FTEs used on the expenditures (especially the cost for expert witnesses).

He indicated this will help the Finance Committee when it meets in January to develop a budget package for the next biennium.

4.2 Joint Operating Agreement – Frank Hensley

Frank Hensley reported that the Committee did not meet. He indicated that the Committee is waiting for the recommendations and outcome of the Walk In the Woods mediation.

4.3 Continuing Competency- Chelle Moat, MD

Dr. Moat reported that the Committee has not met. She indicated the need to appoint another Commissioner to act as chair. William Gotthold, MD, volunteered to replace Dr. Moat as committee chair.

4.4 Office Based Surgery Rules – Hampton Irwin, MD

Dr. Irwin reported on the first meeting of the task group regarding SHB1414 and gave background on the Commission's guidelines and rule development on Office Based Surgery (OBS). He mentioned how much he appreciated Dr. Bernstein, Podiatric Board Chair; Arlene Robertson, Program Manager for the Osteopathic Board of Medicine and the Podiatric Board of Medicine and Bryon Plan and Linda Foss from DOH Facilities Services and Licensing (FSL) for attending and participating in the discussion regarding the challenges of developing rules as defined in SHB1414. Dr. Irwin mentioned the bill addressed general anesthesia for licensure but not conscious sedation. Dr. Irwin stated the task group will begin writing rules. He also mentioned that he will be attending the FSL task group on Ambulatory Surgical Facilities on December 6, 2007.

4.5 Non-Surgical Cosmetic Procedures Rules – Sam Selinger, MD

Dr. Selinger reported that the task group has completed the first draft of the non-surgical cosmetic procedure rules. He indicated the draft rules were based on the current Idaho and Alabama rules with the exception of the portion on lasers, which has already been adopted. The first draft will be available for comment the first week of December.

4.6 Physician Assistant Advisory Committee – Ellen Harder, PA-C

Ms. Harder reported that the Committee met on November 29. The committee reviewed all the Physician Assistant rules and regulations and prioritized their work for the January 2008 meeting. Ms Harder mentioned that Richard Bunch, MD had been appointed as a Pro tem member of the committee. Dr. Bunch is a great addition to the committee. He was the founding father of the Physician Assistants (PA) licensure in Washington State. He has been a part of the PA program at Med Ex since their commencement in 1967.

5.0 OTHER BUSINESS

5.1 Proposed Pilot Concepts

Commission Management staff presented pilot concepts for the Commission to consider:

- **Disciplinary Case Presentation** – Ms. Thomas suggested going back to a former way of approving case closures and suggested using a consent agenda for cases that are recommended to be closed. Ms. Thomas stated this would free up time and allow the Commissioners time to discuss cases that need sanctioning. She also mentioned Dr. Burger's template to use for all cases. Frederick Dore, MD state that Panel B discussed having redacted copies of Reviewing Commission Member's (RCM) case presentation sent to the panel prior to the Thursday's case review day at each Commission meeting. Dr. Dore mentioned how this would allow time to use the sanctioning guidelines of cases that are under consideration for charging. Bruce Cullen, MD stated that he was not in favor of a Consent Agenda; however, he would be in favor for a redacted version be sent to the panel ahead of time. Additionally Dr. Cullen indicated how

important it is to hear the RCM present the facts of the case to the panel. The discussion of the case adds value to the decision making process.

- **Non-routine Application** – Ms. Thomas reported the credentialing unit has seen an increase in non-routine applications. Ms. Thomas suggests that a credentialing panel review and approve non-routine applications for consistency. Dr. Dore, Dr. Harvey, Dr. Cullen, Ellen Harder, PA-C and Cabell Tennis volunteered to be on this committee. Ms Harder also made a resolution to ensure consistency in the information provided to the credentialing panel.

- Be it Resolved that the Medical Quality Assurance Commission requests all licensure applications or practice plans of a non-routine nature to include positive personal data questions, negative information regarding training, privileges, or disciplinary actions be forwarded to one of the following for review:

- George Heye, MD
- Beverly Thomas, Program Manager
- Maryella Jansen, Deputy Executive Director

ACTION TAKEN: The motion for the Resolution allowing a change in the administrative process was seconded and approved.

- **Compliance Process-** Maryella Jansen, Deputy Executive Director requested a review of the 2003 policy regarding compliance. Ms. Jansen stated she would discuss the issue with the Panel Chairs. Dr. Dore stated that Staff Attorneys and the Reviewing Commission Member should be present at the time of the compliance appearance or request for modification or reinstatement of an existing Commission Order.
- **Formal Disciplinary Hearings-** Pamela Anderson, AAG and Erin Obenland, Case Manager presented data on the hearing process of the last biennium. Ms. Anderson suggested the Commission agree to do at least one or two hearings a year. Ms Obenland provided the Commission with the dates for hearings scheduled in March, April and May of 2008.
- **Wednesday and Thursday Meeting Days-** Ms. Thomas reported having a discussion with the Executive Committee about the complicated logistics of the Wednesday and Thursday business meeting days. The Executive Committee indicated that the task groups were willing to do more work using conference calls and report to the Commission during the business meetings. She also revisited the concept of three Commission panels in order to promote efficiencies and potentially reduce costs.

6.0 **MEMBERS REPORTS**

6.1 **Walk in the Woods Mediation Summary**

Linda Ruiz, Public Member, asked if there was a cost to the Commission for the Walk in the Woods mediation. The Chair reported there was a cost to have the mediator. Chelle Moat, MD stated the meeting was a good beginning step. DOH Secretary Selecky was there and discussed the issues that face the commission and their administrative staff. Dr. Selinger stated that it was worth the cost to have a mediator.

6.2 **Citizens Advocacy Center Summary**

Ellen Harder, PA-C reported on her attendance at the Citizens Advocacy Center meeting in Seattle. She reported although it was a good meeting, she was disappointed that none of the Commission's public members were invited to speak at the conference.

6.3 **Other Members Reports**

Dr. Moat reported that she will be resigning her position for personal reasons. Dr. Moat stated how much she has enjoyed being a part of the Commission. The Chair complimented Dr. Moat on her service to the Commission and wished her well in her future endeavors. Ms Thomas also reported that Dr. Cogen is thinking of retiring from practice and moving out of state.

7.0 **STAFF MEMBERS REPORTS**

7.1 **Executive Director**

Ms. Jansen distributed the written Executive Director Report from Mr. Maresh. She mentioned that Mr. Maresh wanted to emphasize item number seven of his report regarding the follow-up to the Walk in the Woods discussion. Dr. Marcus will prepare official minutes memorializing the discussion and agreements of November 6, 2007.

7.2 **Deputy Executive Director**

Maryella Jansen, Deputy Executive Director reported that credentialing staff has been receiving compliments on their work performance. Betty Elliott, Licensing Representative was recognized by Secretary Selecky for her timely work. Catrina Murphy, Licensing Representative was mentioned in the agency's newsletter for receiving a complimentary letter from a professional licensing firm.

Ms. Jansen stated that she and Mr. Mihelich were selected to work on committees for the next phase of the Health Systems Quality Assurance reorganization. She stated that the committees would begin work on December 6, 2008.

7.3 **Assistant Attorney General**

Pamela Anderson, AAG reported that the Commission must keep track of all contact with legislators when conducting Commission business and report it to the Executive Director on a quarterly basis. She also reported on the Court of

Appeals decision on the Mary Ballard case. The Commission's decision in this matter was upheld by the court.

7.4 Program Manager

Beverly Thomas, Program Manager reported that she met with the University of Washington credential staff to discuss the medical limited licenses. The meeting helped to close the gap in miscommunication regarding medical limited licenses. Ms. Thomas state there could be rules developed regarding fellowship licenses.

Ms. Thomas attended the Hospital Technical Advisory Committee, (TAC) regarding mid-level Providers in Trauma programs. She stated the EMS and Trauma Systems write rules that affect medical providers. She stated that she can see the benefit of interfacing with the Facilities and EMS units after the reorganization. She indicated that she will attend continue to attend the rules meetings because of the potential impact the rules may have on physicians and physician assistants.

7.5 Disciplinary Manager

Ms. Obenland reported the disciplinary unit is fully staffed. She indicated the Case Management Team (CMT) was working well. She thanked the Chair for his participation to help address the hearing scheduling process.

7.6 Medical Consultant

George Heye, MD reported that CMT is going well because of Dr. Cullen's suggestion to mail the redacted complaints in advance of the meeting. Dr. Heye requested feedback on the performance of the expert witnesses the Commission contracts with for administrative hearings.

8.0 ADJOURNMENT

The meeting adjourned at 10:25 a.m.

Respectfully submitted by

Joe Mihelich, Office Assistant III

Cabell Tennis, JD, Chair
Medical Quality Assurance Commission
Approved November 30, 2007